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| 09/145,690      | 09/02/1998  | CHARLES J. LONG JR.  | 97-106CIP           | 6264             |

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EXAMINER

HYLTON, ROBIN ANNETTE

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3727

DATE MAILED: 01/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/145,690

Applicant(s)

LONG JR., CHARLES J. CJ

Examiner

Robin A. Hylton

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20, 22 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20, 22 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 9/2/98 & 10/18/00 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Prosecution has been reopened in the instant application. An action on the merits follows.

#### *Drawings*

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the annular sealing bead on the exterior of said container neck finish must be shown or the feature canceled from the claims (13 and 15). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

#### *Specification*

3. The abstract of the disclosure is objected to because it exceeds 150 words. Correction is required. See MPEP § 608.01(b).
4. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include at least one technical, or inventive, feature of the claimed instant invention.
5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "a sealing bead on the exterior of said container neck finish" as set forth in claims 13 and 15 (see page 12, line 13).

#### *Double Patenting*

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

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improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claim 7 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,059,134 in view of Perchepied (US 5,609,263). It is noted that claim 7 of the instant application is construed to incorporate by reference all the limitations of the claim to which it refers (35 USC 112).

Claim 1 of the patent does not set forth a tamper indicating ring with at least one arcuate projection on a portion thereof cooperating with at least one nonremovable member breakably attached to the tamper indicating ring for fracturing a weakened area of the tamper indicating ring from the portion of the tamper indicating ring attached to the at least one arcuate projection.

Perchepied teaches a tamper indicating closure having a tamper indicating ring with at least one arcuate projection on a portion thereof cooperating with at least one nonremovable member breakably attached to the tamper indicating ring for fracturing a weakened area of the

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tamper indicating ring from the portion of the tamper indicating ring attached to the at least one arcuate projection.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Perchepped to the tamper indicating closure of claim 1 of US Patent 6,059,134. Doing so would allow complete removal of the tamper indicating ring from the container neck upon removal of the closure for ease of recycling the container.

***Claim Rejections - 35 USC § 112***

8. Claims 1-25 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

There is no disclosure to support the claim limitation of only "a frangible element" connecting the tamper indicating ring to the closure skirt.

With respect to claims 9-12, it is unclear how an annular bead can extend around "at least a portion" of the circumference of another structure. An annular bead, by definition, must extend around the entire circumference.

9. Claims 1-20, 22, and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

Claims 1 and 25 recite the limitation "said frangible elements" in lines 21-22 of each claim. There is insufficient antecedent basis for this limitation in the claim.

There is inconsistency in the body of claims 1 and 7-16, as they depend from claim 1, and not claim 25, which render the metes and bounds of the claims unclear. The recitation of

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"said container neck" positively recites the container as part of the claimed structure.

Additionally, the recitation of the projection engaging the frangible element of the tamper indicating ring also positively introduces a relationship between the closure and the container. Thus, the scope of the claims is not clearly defined since a contradiction exists within the body of the claims of whether the subcombination of the closure only or the combination of the closure and the container is being claimed. The applicant is also required to make the language of the claims consistent with his intent, i.e., if applicant is only claiming the subcombination, then it is suggested that "said container neck" be changed to -- the container neck--.

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

***Claim Rejections - 35 USC 102***

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 1, 2/1, 3/2/1, 5/3/2/1, 7/1, 22/1, 25, 2/25, 3/2/25, 5/3/2/25, 22/25 are rejected under 35 U.S.C. 102(b) as being anticipated by Perchepied (US 5,609,263).

Closure top portion 3 has an annular skirt 3a having an internal screw thread 8, an inner annular sealing flange 10, and a tamper indicating ring 20 connected to said skirt by a frangible element 21, said tamper indicating ring having at least one arcuate projection 24 and at least one nonremovable member 23 breakably attached to the tamper indicating ring at a weakened area 22a. The at least one arcuate projection 24 to the left of the slot 22 as seen in fig.2 cooperates with the nonremovable member to fracture the weakened area 22a.

The at least one arcuate projection is arcuate in a circumferential direction extending around the tamper indicating ring (fig.1). The uppermost surface of the projection is a locking member.

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***Claim Rejections - 35 USC 103***

12. Claims 11/1, 11/25, 13/11/1, 13/11/25, 14/11/1, and 14/11/25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perchepied in view of Montgomery (US 5,379,910).

Perchepied teaches the claimed closure (and container) except for an annular bead extending from the closure skirt for engaging a sealing groove or a sealing bead on the exterior container neck.

Figures 3-5 of Montgomery teaches a closure comprising an annular bead **40** extending from the closure skirt for contacting at least a portion of the exterior container neck finish. The annular bead is seen as engaging a groove in fig.4 and a bead **30** in fig. 5.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the teaching of an annular bead extending from the closure skirt for contacting at least a portion of the exterior of the container neck finish, including a sealing groove or a sealing bead, to the closure of Perchepied. Doing so would provide an additional seal between the closure and the container.

13. Claims 17/1, 17/25, 19/1, and 19/25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perchepied in view of Repp et al. (US 5,593,055).

Perchepied teaches the claimed closure except for the number of thread leads and the thread leads being segmented.

Repp teaches a container assembly comprising at least seven thread leads and that the threads can be segmented (col. 4, lines 40-46).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the closure of Perchepied with eight or nine thread leads, since it has been held that discovering an optimum value of a result effective variable involves only

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routine skill in the art, and to make the threads segmented is an obvious variation of thread arrangement.

14. Claims 1, 2/1, 3/2/1, 5/3/2/1, 7/1, 22/1, 25, 2/25, 3/2/25, 5/3/2/25, 22/25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kern (US 4,448,319) in view of Perchepied.

Kern discloses a(n initially) snap-on, twist-off closure comprising a top portion, an annular depending skirt having an internal thread configuration, and an annular sealing flange depending from the top portion. Kern does not teach a tamper indicating ring.

Perchepied teaches it is known to provide a closure with a tamper indicating ring.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the teaching of a tamper indicating ring to the closure of Kern. Doing so would ensure the integrity of the container contents prior to use by the ultimate consumer.

15. Claims 9/1 and 9/25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 or 25 above, and further in view Csaszar (US 4,343,408).

Kern as modified teaches the claimed closure (or container assembly) except for a sealing bead on the annular sealing flange.

Figure 6 of Csaszar teaches an annular sealing flange comprising an annular sealing bead for ensuring firm contact between the closure bead and the interior surface of the container neck (column 8, lines 3-6).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the teaching of an annular sealing flange comprising an annular sealing bead to the modified closure of Kern. Doing so would provide a sealing engagement with the internal surface of the container neck without an engagement between a majority portion of the annular sealing flange and the container neck.



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16. Claims 11/1, 11/25, 13/11/1, 13/11/25, 14/11/1, and 14/11/25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1, 11/1, 11/25, and further in view of Montgomery.

Kern as modified teaches the claimed closure except for an annular bead extending from the closure skirt for engaging a sealing groove or a sealing bead on the exterior container neck.

Figures 3-5 of Montgomery teaches a closure comprising an annular bead **40** extending from the closure skirt for contacting at least a portion of the exterior container neck finish. The annular bead is seen as engaging a groove in fig.4 and a bead **30** in fig. 5.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the teaching of an annular bead extending from the closure skirt for contacting at least a portion of the exterior of the container neck finish, including a sealing groove or a sealing bead, to the modified closure of Kern. Doing so would provide an additional seal between the closure and the container.

17. Claims 17/1, 17/25, 19/1, and 19/25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 or 25 above, and further in view of Repp.

Kern as modified teaches the claimed closure except for the number of thread leads and the thread leads being segmented.

Repp teaches a container assembly comprising at least seven thread leads and that the threads can be segmented (col. 4, lines 43-46).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to further provide the closure of Kern with eight or nine thread leads, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art, and to make the threads segmented is an obvious variation of thread arrangement.

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***Allowable Subject Matter***

18. Claims 7/25, 8/6/4/3/2/1, 10/8/6/4/3/2/1, 12/10/8/6/4/3/2/1, 15/12/10/8/6/4/3/2/1, 16/12/10/8/6/4/3/2/1, 18/12/10/8/6/4/3/2/1, 20/18/12/10/8/6/4/3/2/1, 8/6/4/3/2/25, 10/8/6/4/3/2/25, 12/10/8/6/4/3/2/25, 15/12/10/8/6/4/3/2/25, 16/12/10/8/6/4/3/2/25, 18/12/10/8/6/4/3/2/25, 20/18/12/10/8/6/4/3/2/25 appear to be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 1<sup>st</sup> and/or 2<sup>nd</sup> paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

19. Applicant's arguments with respect to claims 1-20,22, and 25 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art references teaching breaking tamper indicating rings are cited for their disclosures.

21. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

22. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

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I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 305-3579 on the date shown below:

Typed or printed name of person signing this certificate  
\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_


23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner can normally be reached on Monday - Friday from 9:30 a.m. to 5:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
December 28, 2001

  
Robin A. Hylton  
Patent Examiner  
GAU 3727